BANK NEGARA MALAYSIA

v.

GERALD GLESPHY G.M. PERARA & ORS.

SUPREME COURT, KUALA LUMPUR
HARUN HASHIM SCJ
MOHD. YUSOFF MOHAMED SCJ
CHARLES NC HO J
[CIVIL APPEAL NO. 02-174-1991]
8 NOVEMBER 1991

CIVIL PROCEDURE: *Whether the High Court or the Sessions Court has jurisdiction to hear breach of scholarship agreement cases - Claim filed in High Court - Contracts (Amendment) Act s. 7 - Courts of Judicature Act 1964, s. 23(1).*

The first respondent (R1) was awarded a scholarship by the appellant (BN). In consideration of the scholarship grants, R1 was required to serve BN for a total period of 12 years failing which he was to pay BN a sum of RM90,000.

When he left BN's service after 4½ years, BN demanded payment of the sum above, but R1 failed to pay. BN took out a writ claiming against R1 the sum of RM90,000 as liquidated damages, interests and costs. The other 4 respondents were sureties of R1.

The respondents applied for BN's writ to be struck out on the ground that the High Court had no jurisdiction to hear the case. It was argued by the respondents that s. 7 of the Contracts (Amendment) Act 1976 conferred exclusive jurisdiction on the Sessions Court with respect to scholarship agreements and at the same time ousted the jurisdiction of the High Court. The respondents' application was granted; hence this appeal.

Held:

[1] The High Court has unlimited jurisdiction to try all civil claims, including claims that may be made in Sessions Court and the Magistrate's Court.

[2] Section 7 of the Contracts (Amendment) Act 1976, read together with s. 23 of the Courts of Judicature Act 1964 does not oust the jurisdiction of the High Court to try scholarship agreement cases.

[Appeal allowed with costs at rates prescribed for the Sessions Court.]

[Bahasa Malaysia translation of headnote]

PROSEDUR SIVIL: *Sama ada Mahkamah Tinggi atau Mahkamah Sesyen mempunyai bidangkuasa untuk mendengar kes-kes perjanjian biasiswa - Responden diberi biasiswa - Kemungkiran perjanjian - Tuntutan difailkan di Mahkamah Tinggi - Akta Kontrak (Pindaan) 1976, s. 7 - Akta Mahkamah Kehakiman 1964, s. 23(1).*

Responden pertama (R1) telah diberi biasiswa daripada perayu (BN). Dibawah syarat kontrak biasiswa itu R1, di kehendaki berkhidmat 12 tahun. Sekiranya R1 gagal berbuat demikian ia terpaksa membayar balik wang berjumlah RM90,000 kepada BN.

Apabila R1 berhenti berkhidmat dengan BN selepas tempoh 4½ tahun BN menuntut pembayaran jumlah tersebut di atas tetapi R1 gagal membayar. BN mengeluarkan satu writ menuntut wang sebanyak RM90,000 dari R1 sebagai gantirugi jumlah tertentu (liquidated damages), faedah dan kos. Empat responden yang lain adalah penjamin R1.

Responden-responden telah memohon supaya writ BN dibatalkan atas alasan Mahkamah Tinggi tidak mempunyai bidangkuasa untuk mendengar kes ini. Responden-responden menghujah bahawa s. 7 Akta Kontrak (Pindaan) 1976, memberikan bidangkuasa eksklusif kepada Mahkamah Sesyen berhubung dengan perjanjian biasiswa yang juga menyingkirkan bidangkuasa Mahkamah Tinggi. Atas sebab permohonan responden dibenarkan oleh Mahkamah Tinggi; ini adalah kerana rayuan pihak BN.

Diputuskan:

[1] Mahkamah Tinggi mempunyai bidangkuasa yang tidak terbatas bagi membicarakan semua tuntutan sivil termasuk tuntutan yang boleh dibuat di Mahkamah Sesyen dan Mahkamah Majistret.

[2] Seksyen 7 Akta Kontrak (Pindaan) 1976, apabila dibaca bersama dengan s. 23 Akta Mahkamah Kehakiman 1964 tidak menyingkir bidangkuasa Mahkamah Tinggi untuk membicarakan kes perjanjian biasiswa.

[Rayuan dibenarkan dengan kos mengikut kadar yang ditetapkan untuk Mahkamah Sesyen.]

Cases referred to:

Albon v Pylce [1842] 4M & G 421
Ponniah v. Chinniah [1961] MLJ 66 ***(foll)***
Macphail & Co. v. Harper, Gilfillan & Co. Ltd. [1937] MLJ 91 ***(cit)***
Song Kim Puah v. Lim Hoe Chye [1954] MLJ 197 ***(cit)***

Legislation referred to:

Contracts (Amendment) Act 1976, s. 7
Courts of Judicature Act 1964, s. 23(1)
Federal Constitution, art. 128
Rules of the High Court 1980, O. 59 r. 27(6)
Subordinate Courts Act 1948, s. 65

Other source referred to:

Halsbury's Laws of England, Vol. 10 para. 713 at p. 321

For the appellant - C.V. Das (Linda Tai with him); M/s. Shook Lin & Bok
For the respondents - Lee Min Choon (Yapp Hock Swee with him); M/s. Lee, Perara & Tan

JUDGMENT

Harun Hashim SCJ:

The only issue in this appeal is whether the Sessions Court has exclusive jurisdiction to hear scholarship agreement cases. The brief facts giving rise to this appeal are as follows:

The first respondent was awarded a scholarship in 1975 by Bank Negara to read law at a university and subsequently to read-in-chambers at a firm of solicitors. In consideration of the scholarship grants, the first respondent was required to serve Bank Negara for a total period of 12 years failing which he was to pay Bank Negara RM90,000. He left the service of Bank Negara after 4½ years. Bank Negara demanded payment of the RM90,000 but the first respondent failed to do so, whereupon Bank Negara took out a writ in the High Court on 18 November 1986, claiming the sum of RM90,000 as liquidated damages, interests and costs. The other four respondents are sureties of the first respondent.

On 19 October 1990, the respondents took out a summons-in-chambers that Bank Negara's (the appellant) writ be struck out on the ground that the High Court has no jurisdiction to hear the case. It was argued that s. 7 of the Contracts (Amendment) Act 1976 (the Act) conferred exclusive jurisdiction on the Sessions Court with respect to scholarship agreements and at the same time ousted the jurisdiction of the High Court. The learned Judge agreed and struck out the writ with liberty to file a fresh claim.

The preamble to the Act reads:

> An Act to amend the Contracts Act 1950, to make provisions with respect to scholarship agreements.

Section 7 of the Act provides:

> Notwithstanding anything contained in any written law to the contrary, the Sessions Court and, in the case of Sabah and Sarawak, the Court of a Magistrate of the first class shall have jurisdiction in all civil proceedings which arise from or relate to a scholarship agreement.

The Act came into force on 27 February 1976. On that date the civil jurisdiction of the Sessions Court did not exceed RM25,000 and was only increased to RM100,000 with effect from 22 May 1987: Section 65 Subordinate Courts Act 1948. It was for this reason, it is said, that the appellant filed the claim in the High Court. It is clear, however, from s. 7 of the Act that the Sessions Court had jurisdiction to hear scholarship agreement cases not only of amounts exceeding RM25,000 but also of amounts exceeding RM100,000 as well, as far back as 1976.

But is the jurisdiction exclusive to the Sessions Court? The plain wording of s. 7 does not say so. It merely says "the Sessions Court ... shall have jurisdiction ..." It would be different if the word "only" is added before the words "the Sessions Court" or by some other expressions like "to the exclusion of any other Court." The words, "Notwithstanding anything contained in any written law to the contrary" in this context, can only refer to s. 65 of the Subordinate Courts Act which limits the civil jurisdiction of the Sessions Court to claims not exceeding RM25,000 before 1976 and RM100,000 thereafter. Section 7 is therefore only permissive and not imperative in enhancing the jurisdiction of the Sessions Court.

Section 23(1) of the Courts of Judicature Act 1964, provides *inter alia:*

> Subject to the limitations contained in Article 128 of the Constitution the High Court shall have jurisdiction to try all civil proceedings where:

The word "all" means any civil proceeding irrespective of the amount of the claim. To put it in another way, the High Court has **unlimited jurisdiction** to try all civil claims, including claims that may be made in the Sessions Court and the Magistrate's Court: *Ponniah v. Chinniah* [1961] MLJ 66.

> The general rule undoubtedly is that the jurisdiction of superior Courts is not taken away except by express words or necessary implication per Tindal CJ in *Albon v. Pyke* [1842] 4M & G 421.

> The chief distinctions between superior and inferior Courts are found in connection with jurisdiction. *Prima facie*, no matter is deemed to be beyond the jurisdiction of a superior Court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior Court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognisance of the particular Court. *Halsbury's Laws of England* (4th Edn., Vol. 10 para. 713 p. 321.

It follows that s. 7 of the Act read together with s. 23 of the Courts of Judicature Act does not oust the jurisdiction of the High Court to try scholarship agreement cases.

In the instant case, we are inclined to think that the truth of the matter is that the appellant had overlooked the provisions of s. 7 of the Contracts (Amendment) Act 1976, when they filed the writ in the High Court. For the reasons we have stated, the writ is good and effective. We accordingly allowed the appeal with costs here and below. We set aside the order of the learned Judge and ordered the deposit to be refunded to the appellant. However, as the appellants should have filed their claim in the Sessions Court, they would be entitled to costs in the High Court at the rates prescribed for the Sessions Court only: O. 59 r. 27(6) RHC. see also *Macphail & Co. v. Harper, Gilfillan & Co. Ltd.* [1937] MLJ 91; and *Song Kim Puah v. Lim Hoe Chye* [1954] MLJ 197.

Also found at [1992] 1 CLJ 15